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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,302	07/31/2003	Joel B. Christian	00-2-036CON1	1872
24252	7590	06/07/2005	EXAMINER	
OSRAM SYLVANIA INC 100 ENDICOTT STREET DANVERS, MA 01923			HAILEY, PATRICIA L	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/631,302

Applicant(s)

CHRISTIAN ET AL.

Examiner

Patricia L. Hailey

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 40-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1755

Applicants' remarks and amendments, filed on March 21, 2005, have been carefully considered. No claims have been canceled or added; claims 1-9 and 40-45 remain pending in this application.

***Maintained Rejections***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. ***Claims 1-9 and 40-45 stand rejected under 35 U.S.C. 102(b) as being anticipated by Savadogo et al. (U. S. Patent No. 5,298,343).***

Savadogo et al. teach electrocatalysts suitable for use as the cathode for electrochemical and fuel cells. The electrocatalysts comprise a metallic component (selected from the group consisting of palladium, platinum, ruthenium, rhodium, iridium, and osmium) dispersed on a suitable conductive carrier (e.g., carbon), and a chemical component (selected from the group consisting of tungstic acid, molybdic acid, ammonium tungstate, ammonium molybdate, sodium tungstate, and sodium molybdate). The metallic component is dispersed on the conductive carrier, and the chemical component is admixed therewith. See col. 3, lines 17-36 and lines 42-63 of Savadogo et al., as well as col. 3, line 65 to col. 4, line 38.

Art Unit: 1755

Note that some of the chemical components disclosed in Savadogo et al. are those recited in Applicants' claims 40-45.

The chemical component is present in the electrocatalysts in amounts varying from 0.1% to 90% depending on the percentage desired for the final catalysts. See col. 6, lines 12-55 of Savadogo et al., especially lines 12-16, lines 29-33, and lines 44-51.

The claim limitations regarding the characteristics of Applicants' "tungsten-containing catalyst" (e.g., claims 1-7) are considered inherently taught by Savadogo et al., given that this reference teaches "chemical components" that read upon the instant claims as well as a conductive carrier that reads on the claimed "carbon support".

In view of these teachings, Savadogo et al. anticipate claims 1-9 and 40-45.

### ***Response to Arguments***

In response to Applicants' arguments that the claimed invention "does not require a co-catalyst to achieve the claimed output levels", since Applicants' claims now recite the limitation "consisting essentially of", it is the Examiner's position that, although this recitation is now present in the instant claims, Savadogo et al. is considered to continue to read upon the claimed invention. The phrase "consisting essentially of" is not considered to exclude any additional, unspecified components, provided those components do not have a disadvantageous or deleterious effect on the product as claimed (i.e., Applicants' tungsten-containing fuel cell catalyst).

The term "consisting essentially of" may include any unrecited ingredient which does not affect the basic and novel characteristics of the invention. In re Garnero, 162 U.S.P.Q. 221

Art Unit: 1755

(CCPA 1969); in re De Lajarte, 143 U.S.P.Q. 256 (CCPA 1964); In re Janakirama-Rao, 137 U.S.P.Q. 893 (CCPA 1963); Ex parte Davis, 80 U.S.P.Q. 448 (PO BdPatApp 1949).

Further, Applicants have not shown that the claimed invention exhibits unexpected properties or characteristics, when compared to the prior art electrocatalyst.

For these reasons, Applicants' arguments are not persuasive.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

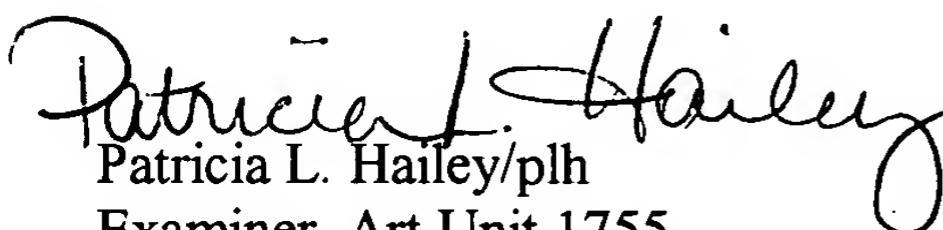
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Hailey whose telephone number is (571) 272-1369. The examiner can normally be reached on Mondays-Fridays.

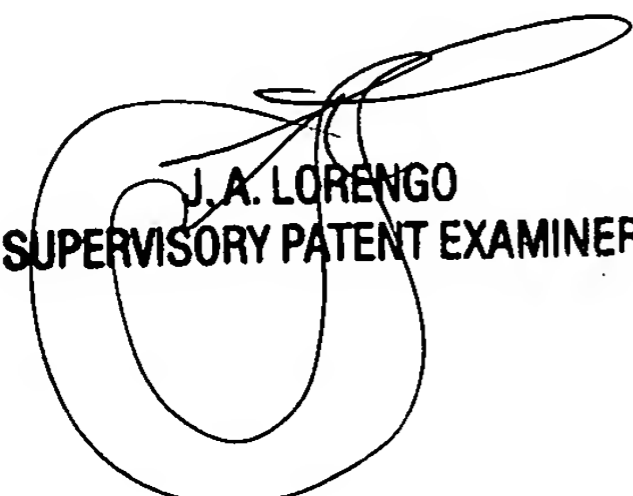
Art Unit: 1755

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 1700 Receptionist, whose telephone number is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Patricia L. Hailey/plh  
Examiner, Art Unit 1755  
June 2, 2005

  
J.A. LORENGO  
SUPERVISORY PATENT EXAMINER